

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

Asheville Division

Case No.

1:21 CV 258-MR

(to be filled in by the Clerk's Office)

JOHNATHAN A. FULLER

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

FILED

Asheville, NC

MAY 25 2022

Clerk, US District Court
Western District of NC

Ronnie
ATTACHED 1 of 7 HUNEYCUTT, et al, see
Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

AMENDED
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

All other names by which
you have been known:

ID Number

Current Institution

Address

~~82. [REDACTED]~~
JOHNATHAN A. FULLER

~~82. [REDACTED]~~ 0620012

~~82. [REDACTED]~~ / mountain view corr.

545-~~82. [REDACTED]~~ Amity Park rd

Spruce Pine

NC

28777

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Job or Title (*if known*)

Shield Number

Employer

Address

Ronnie Huneycutt

Superintendent

N/A

NC DPS

831 W. Morgan St

Raleigh

NC

27603

City

State

Zip Code

☐ Individual capacity

☒ Official capacity

Defendant No. 2

Name

Job or Title (*if known*)

Shield Number

Employer

Address

(FNU) Sgt Hughes

Sergeant

N/A

NC DPS

831 W. Morgan St

Raleigh

NC

27603

City

State

Zip Code

☒ Individual capacity

☒ Official capacity

Defendant No. 3

Name

(FNU) Lt. Fox

Job or Title (if known)

Lieutenant

Shield Number

N/A

Employer

NC DPS

Address

831 W. Morgan St.

Raleigh
City

NC
State

27603
Zip Code

☐ Individual capacity

☒ Official capacity

Defendant No. 4

Name

Todd Ishee

Job or Title (if known)

Commissioner NC DPS

Shield Number

N/A

Employer

NC DPS

Address

831 W. Morgan St.

Raleigh
City

NC
State

27603
Zip Code

☐ Individual capacity

☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

The First, Fifth, Eighth, and Fourteenth amendment. Racial Discrimination.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

They all were employed by NCDPS at the time of violations.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

See Attachments 2-7

C. What date and approximate time did the events giving rise to your claim(s) occur?

December 1, 2020 11:10pm through December 22, 2020

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

See Attachments 2-7

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Severe mental and emotional distress and anguish

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Wherefore, the Plaintiff respectfully request Judgement ...cont Attach 80F8

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Watauga unit at Avery-mitchell Correctional

2. What did you claim in your grievance?

Violations of constitutional rights

3. What was the result, if any?

It was processed; then I never heard anything else.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I wrote emergency grievance to NCDPS Secretary and Commissioner.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

They are known to be destroyed by staff at the Facility.
(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

☒ Yes

☐ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) JOHNATHAN A. FULLER

Defendant(s) Mike Slagle et, al,

2. Court *(if federal court, name the district; if state court, name the county and State)*

Western District

3. Docket or index number

: 1:22-cv-00094-MR

4. Name of Judge assigned to your case

Martin Reidinger

5. Approximate date of filing lawsuit

5-16-22

6. Is the case still pending?

☒ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 5-22-22

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Jonathan A. Fuller
JOHNATHAN A. FULLER
0620012
545 Amity Park rd
SPRUE PINE NC 28777
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

JOHNATHAN A. FULLER

-V-

Defendants continue From Page 1 of 11

(FNU) Sergeant Hughes

(FNU) Lieutenant Fox

Todd Ishee

Erik Hooks

Defendants continue ^{From} Page 3 of 11

Defendant No. 5

Name Erik Hooks

Job or Title Secretary of NCDPS

Shield Number N/A

Employer NCDPS

Address 831 W. Morgan St

Raleigh NC 27603

☒ Individual capacity ☒ Official capacity

On 12-1-20 at approximately 5:35 pm at Avery-mitchell Correctional Institution in Spruce Pine North Carolina, I JOHNATHAN A. FULLER was taken from the Watuga housing unit, which is a general population unit to the restrictive housing unit. Once in a cell I was strip searched by a officer who wore no name tag and told to squat and cough more than necessary. He then tell me to hand him my special medical shoes. When he turn to leave with them I stop him and question him about my shoes. He then tell me that I am not allowed to have them on the unit. But according to my DC-490 and Policy Chapter F Section 0500 I can have them at all-times outside of suicide status. He go on to tell me that he is just doing what he is told. I would later learn that this officer name was Carpenter. After around a six-hour wait for my personal property. I was only brought a pair of shower shoes and a radio. I asked a officer Buchanan what was this. He tell me that this was all allowed in-cell on the restrictive housing unit. Being that I had been incarcerated for some years and studied policies throughout. I knew what he was telling me was untrue. So I press on, requesting to see a ranked official to address the issue. One never came. Being that basically all of my property was withheld. I went several days without a writing implement to file a grievance challenging my condition of confinement. When I did obtain

a writing implement it came from another Prisoner because staff continued to state that they were out of restrictive housing issued pens, which was the first act of denying me access to the court. Several days later while standing at my cell door I see a Sergeant walk in to the housing block. When he got to my door I stopped him and question him about my religious material to my sincerely held belief of Rastafarin which consist of my bible the Kebra Negest and other Prayer and study literature; my legal books and open case material; Family Photos; hygiene — everything that make prison life a little more bearable. He tell me it is stored in Property. But he would get my legal work if I gave him the case number of active cases. I go on to tell him I can have more than that. That I have not had any problems at either of the other five Prisons I have been housed at or even heard of such a rule as the one that continued to be tossed around on this unit. He go on to tell me I wasn't in the Flatlands anymore and things were different there. He left my cell door with the case record numbers: 15:19-CT-3377-BO, TA 28781, TA 28569 and TA 29021 and a request to speak with the lieutenant of the unit who of course never came. Either did my legal documents. Right then he willingly violated my rights protected by the Federal government of access to the courts, life, liberty, and Property. my rights to

Freedom of religious study and practice under the religious land use and institutionalized Person act (RLUIPA). Freedom of the Press in which all were violated due to a deliberate indifference based off my race and ethnicity.

I finally got to talk to the lieutenant of the unit around two weeks later 12-16-2020. This would be lieutenant FOX. I told him I needed things out of storage: Religious books, legal books and documents, hygiene because I could not use the state issued products that were the replacement of my own to use while being housed on the restrictive housing unit. The soap would break my skin out with blisters. And the deodorant would turn my underarm raw as Fresh cut meat. He smiled and state that per his boss (who is Ronnie Huneycutt) that he could only give me legal documents. And if I needed more to address his Boss. That he is the guy that make the rules. At that point and time he also violated my rights guaranteed by the united states Constitution (IB). That same day I wrote to (the boss) who is superintendent Ronnie Huneycutt. who is the supreme governor of the Institution. The Final link on the chain-of-command to never receive a response. Throughout the remainder of my time on this unit I witness white offenders receiving great portions of their Property when they were brought to this unit. I also witness white staff members

bringing white offenders property from storage on many occasions when the act was professed to prohibited to all offenders, which clearly establish discrimination on basis of race which was intentional. Also the rights that were violated by these employees act under color of state law. For their experience alone as ranked officers should had warned them that their actions were illegal and in violation of the Federal rights the united state constitution provide to all citizens. Furthermore, any reasonable person should have known the acts of deprivation to life, liberty, and property were cruel acts of punishment. So I name Erik Hooks and Todd Istee as the last two defendants in this suit. who at the time was the secretary and commissioner of NCDPS. For they had ultimate responsibility for the promulgation and implementation of NCDPS policies, procedures, and practices and for the management of NCDPS. As to all claims presented herein, all defendants are being sued in his official capacity for injunctive and declaratory relief, and in his individual capacity for damages and for declaratory relief. At all relevant times they acted under color of state law.

COUNT I § 11

Violation of the First Amendment and eighth Amendment.

42 U.S.C. § 1983

The acts described above constitute violations of Plaintiff rights under the First Amendment of the United States Constitution. Plaintiff has a constitutionally protected liberty interest in religious study and practice. A right clearly established under existing case law. Plaintiff also had a right to Freedom of the Press, which was violated when staff took incoming publications from the U.S. mail and placed them in Plaintiff stored property. The conduct of Defendants was objectively unreasonable and was undertaken recklessly, intentionally, willfully, with malice, and with deliberate indifference to the rights of Plaintiff.

COUNT III § IV

Violation of the Fifth and Fourteenth.

42 U.S.C. § 1983

The acts describe in this complaint constitute violations of Plaintiff rights under the Fifth and Fourteenth Amendment of the United States Constitution. Plaintiff has a constitutionally protected liberty interest in access to the

Courts, Property related, and Practice. A right clearly established under existing case law. which was violated by Defendants working under color of state law at Avery-mitchell Correctional Institution during the month of december of 2020. The conduct of Defendants was objectively unreasonable, reckless, intentional, willfully, with malice; based off race, with deliberate indifference to the rights of plaintiff.

Therefore, Plaintiff injuries and the violations of ~~his~~ his rights were directly and proximately caused by the policies and practices of Defendants, which are and were the moving force of the violations. Plaintiff seeks declaratory relief against NC DPS, and declaratory and nominal and compensatory damages against all remaining Defendants. Plaintiff seeks punitive damages against the individual Defendants in their individual capacities.

Submitted Respectfully,

Jehmatte A. Dille
545 Amity Park rd
Spruce Pine, NC 28777

against Defendants, Jointly and severally, for the following.

A. A declaration that Defendants' policies and practices violate the constitution.

B. A Permanent injunction preventing Defendants from continuing to violate the constitution, and providing other equitable relief.

C. Nominal damages for each violation of Plaintiff rights by the Defendants.

D. Compensatory damages in an amount to be proven at trial.

E. Punitive damages against the individual Defendants in an amount to be proven at trial.

F. An award of full costs and attorneys' fees arising out of this litigation, under 42 U.S.C. § 1988 and other applicable law.

G. Any other relief this court deems just and appropriate. Pursuant to rule 38(b) of the Federal rules of civil procedure, a trial by jury in this action is not required.